



MOTOROLA

November 12, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Notification – WT Docket No. 99-168

Dear Ms. Salas:

This letter is being filed on behalf of Motorola, Inc. (Motorola). Individually addressed letters identical to the attached copy sent to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, were delivered today to the following FCC personnel:

Ari	Fitzgerald	Legal Advisor to Chairman William Kennard
Bryan	Tramont	Legal Advisor to Commissioner Furchtgott-Roth
Mark	Schneider	Legal Advisor to Commissioner Susan Ness
Peter	Tenhula	Legal Advisor to Commissioner Michael Powell
Adam	Krinsky	Legal Advisor to Commissioner Gloria Tristani
Diane	Cornell	Associate Chief, Wireless Telecommunications Bureau
Kathleen	O'Brien Ham	Deputy Chief, Wireless Telecommunications Bureau
Jim	Schlichting	Deputy Chief, Wireless Telecommunications Bureau

Sincerely,

/s/

Richard C. Barth, Ph.D.
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Attachment



November 12, 1999

Tom Sugrue
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W.
The Portals, Room 3-C252
Washington, D.C. 20554

Dear Tom:

Motorola has appreciated the intense dialog with you and others throughout the Commission on the reallocation of spectrum at 746-806 MHz. Based on that dialog, and our contacts with nearly all other commenters in this proceeding, we have had the opportunity to reinforce and refine our views. This letter is an effort to summarize those views for the record.

Of the Commission's many duties, spectrum management is wisely recognized as being among the most important.¹ Decisions must be taken with a view toward balancing the needs of many constituencies. We understand and share the Commission's concern for responsible spectrum management for many reasons, not least of which is that we are the only stakeholder in this spectrum allocation decision that has customers in virtually every potential group that seeks to use this spectrum. This ranges from broadcasters to cellular phone operators, and from innovative new technologies (3G) to dispatch communications services that are critical to the success of so many small and medium sized businesses. Assessing all of these needs, we continue to believe that the spectrum plan attached most effectively provides balance among them.

Why a Private Spectrum Allocation?

The Commission's duty to manage spectrum includes making sometimes difficult allocation decisions to specific services. All services cannot compete equally for spectrum in an excessively flexible auction environment. A private spectrum allocation in this band makes particular sense because of the following attributes:

- It provides the best possible interference protection to adjacent public safety bands, based on decades of frequency coordination that has been confirmed by numerous public safety user filings in this proceeding. An allocation to private users would not be speculative as to potential interference. We note in particular Motorola's assessment of interference by FreeSpace, which we filed on November 11, 1999. Interference protection is a complicated issue, and the FCC should base its allocation on proven protection from interference, rather than put the public

safety community, and indeed all Americans, at risk for potentially risky systems operating adjacent to public safety spectrum.

- There would be socially beneficial economies of scale by placing private spectrum users in the same band as public safety, as the costs of equipment research, development and production would be shared among a much larger pool of customers. A larger customer base equates to lower cost to the public of arming its police, fire fighters and other emergency rescue personnel with modern digital communications equipment.
- The spectrum allocated to private users would make use of spectrum that otherwise would essentially not be used. CMRS carriers who will undoubtedly acquire the bulk of the available spectrum in this band will be using technologies that will require them to set aside spectrum interference guard bands in any event. The CMRS carriers will be bidding on the spectrum for 3G services that will be accommodated in the remaining 30 MHz of spectrum based on their own business plans, accounting for these guard bands. The result is that ANY revenue from auctions in these bands will be incremental to that which otherwise could be obtained from auctions in this band.
- And finally, over the past decade, there has been a significant amount of spectrum made available for fixed and mobile commercial services targeted toward consumer use and it is likely that additional spectrum will be made available in the near future. Motorola has supported new commercial allocations for consumer services. Conversely, there have been virtually no allocations to serve private users since 1986 and the lack of allocations to PMRS has denied private users similar opportunities. This has been documented in the LMCC filings² and in the Commission's own report.³ There is an urgent and desperate need for spectrum for users who contribute billions of dollars to the US economy. These needs will be served only through an allocation to PMRS because their requirements are defined by unusual geographic areas, and/or relatively few kHz (channels) of spectrum that are impossible to accommodate within the spectrum auction model heretofore used. An NTIA report also supported additional spectrum for this user group.⁴

Why Band Managers and How Would They Operate?

The Balanced Budget Act of 1997 requires that the FCC use auctions to distribute licenses in this 36 MHz of spectrum within the 746-806 MHz band. Therefore, once crossing the threshold of making a decision to allocate spectrum for private services, the Commission should proceed to specify that a newly defined entity, band managers, can acquire this spectrum and contractually permit its use by the PMRS community. We support the band manager ex parte filed by ITA on November 5, 1999⁵ and also provided Motorola comments on bidder eligibility on November 3, 1999 in an ex parte filing.⁶

Band managers might be manufacturers, joint holding companies formed by private dealers, small and medium sized businesses that want to originate new services in a given economic area, or any other entity. Small businesses in particular could have a real opportunity here to develop a new business. The only fundamental restriction should be that the ultimate use of the spectrum meets the requirements of the Commission's PMRS rules, which would not permit for-profit interconnection service to the public telephone network for non-internal use.

Band managers could coordinate the efficient use of spectrum to enable the delivery of services in large metropolitan areas, or to rural or economically deprived regions. It is important to note that many of the commenters in this proceeding are NOT from large metropolitan areas, but are from small communities such as Gadsden, Alabama; El Cajon, California; Grand Island, Nebraska and Rapid City, South Dakota.⁷

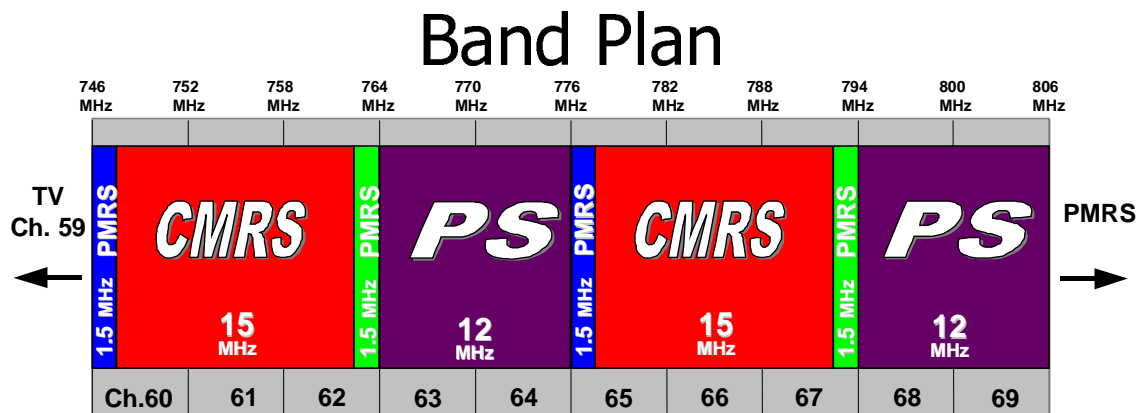
Deployment of the 746-806 MHz spectrum is dependent on protecting incumbent television operations, pending transition of analog television from this band. Band managers will be putting significant capital at risk while full use of the spectrum awaits this transition, now targeted to conclude no sooner than 6 years from now. Bandmanagers should be allowed to operate with as few restrictions as possible, subject of course to the primary objective of making spectrum available to PMRS users and to the full enforcement mechanisms of the Commission, in particular to prevent interference to the allocated public safety spectrum. We believe bandmanagers should:

- Be allowed to contractually "lease" or otherwise arrange for the use of the spectrum by private service providers or internal private system users as long as it is for PMRS services.
- Be permitted to earn a profit based on their investment. Since this is not the only private spectrum available, there are natural incentives not to charge an excess profit. The FCC should not regulate this aspect of the band manager's business.
- Should not be encumbered with undue requirements to permit use of the spectrum by anyone who requests it. It is their capital that will be invested at auction, for spectrum whose full use is not available for 6 or more years. The band manager should be able to determine who can use the spectrum, again within the PMRS eligibility and allowable usage rules. There is no incentive NOT to see the spectrum used given the investment, but there should not be build out requirements or other requirements for access to the spectrum.
- There should be some mechanism to begin the usual ten-year license term officially as of the date of true availability of the spectrum after the relocation of TV services, or immediately for that spectrum not currently occupied by a TV service.

Motorola welcomes further comments and questions on our band plan and band manager proposals.

Sincerely,

Richard C. Barth, Ph.D.
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- 6 MHz allocated for private auctioned (PMRS), in two blocks of 1.5 + 1.5 MHz with band managers
- 30 MHz for Commercial Carriers (CMRS); 15+15 MHz.
- 24 MHz for public safety (allocation completed)

¹ Draft Strategic Plan of William E. Kennard, Chairman, Federal Communications Commission, August 1, 1999.

² *In the matter of an Allocation of Spectrum for the Private Mobile Radio Services*, filed by Land Mobile Communications Council, RM Docket No. 9267. See Public Notice 2272, released April 30, 1998.

³ *Private Land Mobile Radio Services: Background Report* of the FCC's Wireless Telecommunications Bureau, December 18, 1996.

⁴ *U.S. National Spectrum Requirements: Projections and Trends*, NTIA Special Publication 94-31, March 1995.

⁵ See Letter from Laura Smith, Executive Director, Government Relations, Industrial Telecommunications Association, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated November 5, 1999.

⁶ See Letter from Robert L. Pettit, on behalf of Motorola, Inc., to Magalie Roman Salas dated November 3, 1999.

⁷ See Letters from Mike McCord, President of McCord Communications in Gadsden, AL dated September 20, 1999; Robert R. Moreau, Chief of Police, City of El Cajon, CA dated October 25, 1999; Tony J. Miller of Platte Valley Communications in Kearney, NE dated October 4, 1999; and Michael A. Lees, President of Western Communications, Inc. in Rapid City, SD to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission.